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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,989	02/06/2001	Thomas Lee Chester	8035M	3218
27748	7590	05/25/2005		
THE PROCTER & GAMBLE COMPANY PATENT DIVISION MIAMI VALLEY LABORATORIES P.O. BOX 538707 CINCINNATI, OH 45253-8707			EXAMINER WACHSMAN, HAL D	
			ART UNIT 2857	PAPER NUMBER

DATE MAILED: 05/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

Office Action Summary

Application No.

09/777,989

Applicant(s)

CHESTER ET AL.

Examiner

Hal D. Wachsman

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 10-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5-12-03</u> . | 6) <input type="checkbox"/> Other: _____ |



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09/777,989

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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05212005

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Hal D Wachsman
Primary Examiner
Art Unit: 2857

1. Applicant's election with traverse of species I (illustrated by the specification at page 10, starting in line 25 – claims 1-9) in the reply filed on 3-23-05 is acknowledged. The traversal is on the ground(s) that the methods for conducting high performance liquid chromatography would be grouped by the Examiner into the same class, class 210 and that a comprehensive search of one class of art would not be unduly burdensome. This is not found persuasive because the showing of a burdensome search is **not a requirement** of the Examiner in a species restriction and the species restriction made satisfies MPEP 806.04(f).

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 10-34 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 3-23-05.

3. The drawings are objected to because what is shown in Figure 6 (CPU, hard disk drive, etc.) was known in the prior art however this figure has not been labeled as "Prior Art" and the Brief Description of the Drawings does not refer to this as prior art. Also, labeling (i.e. in words) is needed in Figure 1 and the stamps containing the inventor name, title, etc. in all the figures should be deleted. Appropriate correction is required.

4. Paragraph 5 of the Restriction requirement mailed 9-23-04 stated that an Information Disclosure Statement was filed by the Applicant on 7-20-01 containing 102 non-patent literature references. However, review of the image file wrapper showed that these references were missing from the image file wrapper. Consequently, the Applicant

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was respectfully requested to resubmit copies of those references with the reply to the Restriction Requirement. However, the Response to the Restriction requirement received 3-23-05 does not comment on this request and it appears that copies of those IDS non-patent literature references have not been resubmitted as they are not in the image file wrapper. Because of the above, the IDS filed 7-20-01 could not be considered and copies of all those non-patent literature references are still needed for the IDS filed 7-20-01 to be considered.

5. The Applicant filed a Preliminary Amendment dated 2-28-01 which adds a CROSS REFERENCE section at page 1, line 8, of the specification. However, review of the image file wrapper shows that this specification amendment was not properly entered into the specification before the paper file wrapper was converted into the image file wrapper. Therefore, the Applicant should resubmit this specification amendment in accordance with the current 37 C.F.R. 1.121 rules in the reply to this Office action.

6. The Brief Description of the Drawings does not indicate that Figures 1 and 6 are prior art and refers to a Figure 4 when there are actually Figures 4A and 4B. Appropriate correction is required.

7. The use of the trademark Waters Alliance Model 2690 HPLC (see page 26 of the specification) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

8. Page 9 of the specification refers to Figure 4 however there are actually Figures 4A and 4B. Appropriate correction is required.

9. Claim 9 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from another multiple dependent claim. Claim 9 depends from claim 3 in which claim 3 depends from claim 1 or 2. See MPEP § 608.01(n). Accordingly, the claim has not been further treated on the merits.

10. Claim 3 is objected to under 37 C.F.R. 1.52 because the size of the print in the subscripts is too small. Appropriate correction is required.

11. Claims 1-8 are objected to under 37 C.F.R. 1.75(a) for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Claim 1, step i, cites "performing a time segmented numerical analysis..." but an analysis of what exactly is being referred to here ? Claim 1, step ii, cites "calculating contribution to broadening of the solute peak..." but contribution of what exactly is being referred to here ? Claim 1, step iii, cites "accumulated peak width" which lacks clear antecedent basis. Claim 1, step iv, cites "its next value" however the use of the pronoun "its" adds vagueness with respect to what exactly possesses the next value. Claim 1, step vi, cites "optionally displaying the accumulated peak width..." but on what exactly is this being displayed on ? In addition, there appears to be a lack of connection between this step and the step before, as the step before states "repeating step i-iv until the

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solute peak elutes". Also by stating "*optionally* displaying..." indefiniteness is created in the claim as the displaying described may or may not be part of the claimed method.

Claim 3, line 2, cites "...calculated according to an equation selected from the group consisting of" however there is only a single equation that follows this and not a group of equations to select from. Claim 3, line 5, cites "algebraic equivalents thereof" but algebraic equivalents for what exactly are being referred to here ? Claim 3, lines 5-6, cite "an equation which can be transformed, using known identities from chromatographic theory.." which is vague with respect to what type of equation is being referred to here and what exactly are the known identities being claimed here. Claim 4, line 1, cites "the gradient" however the antecedent basis is "gradient elution chromatography program". Claim 5, line 1, cites "the chromatography program" however the antecedent basis is "gradient elution chromatography program". In claim 6, line 2, it appears that the word "the" is missing before the word "distance", In claim 6, line 3, it appears that the word "the" is missing before "total distance". The preamble of claim 7 cites "...further comprising the steps of" however there is only a single step in this claim. The examiner asks the applicant to better claim the limitations cited above. While the examiner understands the intentions of the applicant he feels confusion could be drawn from the limitations cited above. Appropriate correction is required.

Claim Rejections - 35 USC § 101

12. 35 U.S.C. 101 reads as follows:

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Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

13. Claims 1-8 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims recite a series of mathematical operations (numerical analysis, calculating, interpolating, etc) which can be done on paper as the claims are not indicated as being computer-implemented. In addition, the claims recite no clearly defined practical application of the claimed method or do not draw a conclusion as to the final end result of the mathematical operation being directed toward a practical application. Mathematical algorithms per se that stand alone and are not reduced to a practical application represent nothing more than an abstract idea. Thus, because of the above, the claimed method does not produce a useful, concrete and tangible result and therefore claims 1-8 are directed toward non-statutory subject matter.

14. The following references are cited as being art of general interest: Settlage et al. (6,139,734) which disclose the broadening of an elution peak, Goetzinger et al. (6,497,820) which disclose gradient reverse phase HPLC, Ito (5,449,461) which discloses an elution producing a train of solute peaks, Kibbey et al. (5,670,054) which disclose an automated HPLC system, Ma et al. (6,337,021) which disclose that increased peak width makes detection of the solute more difficult and Dourdeville (5,897,781) which disclose the representation of a pattern of analyte concentration within eluting bands.

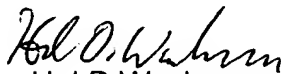
15. No claims are allowed.

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16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hal D. Wachsman whose telephone number is 571-272-2225. The examiner can normally be reached on Monday to Friday 7:00 A.M. to 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 571-272-2216. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Hal D Wachsman
Primary Examiner
Art Unit 2857

HW
May 22, 2005